

JEFFREY M. LENKOV, ESQ. (SBN 156478)

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MANNING & KASS

ELLROD, RAMIREZ, TRESTER LLP

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Attorneys for Defendant

MACY'S WEST STORES, INC. [Erroneously sued herein as MACY'S INC.]

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CV11-07824 MRP(FMX)

LORI LYNN BENJAMIN,

Plaintiffs,

vs.

MACY'S INC. A Business Entity; DOES
1 through 50, Inclusive; ROE
CORPORATION and ROE
PARTNERSHIP,

Defendants.

Civil Action No.:

**DEFENDANT MACY'S WEST
STORES' NOTICE OF REMOVAL
OF ACTION UNDER 28 U.S.C.
§1441(b); AND DECLARATION OF
JEFFREY M. LENKOV IN
SUPPORT THEREOF**

DEMAND FOR JURY TRIAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant Macy's West Stores, Inc.

[erroneously sued herein as Macy's Inc.] hereby removes to this Court the State
Court action described below:

1. On September 1, 2011, Plaintiff Lori Lynn Benjamin filed this action in
the Superior Court of the State of California, County of Los Angeles, as Case No.
SC113996. Attached hereto as Exhibit "A" is a true and correct copy of the
Summons and Complaint. Attached hereto as Exhibit "B" is a true and correct copy
of Defendant Macy's West Stores' answer.

2. This action is a civil action of which this Court has original jurisdiction

1 under 28 U.S.C. §1332, and is one which may be removed to this Court by
2 Defendant Macy's pursuant to the provisions of 28 U.S.C. §1441, in that it is a civil
3 action between citizens of different states and the matter in controversy exceeds the
4 sum of \$75,000, exclusive of interest and costs.

5 3. Diversity of the parties exists as Plaintiff is a citizen of the State of
6 California, County of Los Angeles.

7 4. Defendant Macy's West Stores, Inc., is an Ohio corporation with its
8 headquarters and principal place of business located in the Cincinnati, OH.

9 5. Plaintiff's lawsuit asserts a cause of action for negligence against
10 Macy's, and is based upon his claim that she suffered from physical injury and
11 damages, including lost earnings, allegedly caused by Macy's.

12 6. Attached hereto as Exhibit "C" is Plaintiff's Statement of Damages
13 which sets for the following damages sought by Plaintiff \$500,000 for general
14 damages. In light of the alleged seriousness of the injuries claimed in Plaintiff's
15 Complaint, and the fact that Plaintiff is seeking loss of wages, hospital and medical
16 expenses, general damages, and other damages as well as pain and emotional distress,
17 the amount in controversy in this action exceeds the \$75,000 jurisdictional limit
18 established by 28 U.S.C. section 1332(a).

19
20 Dated: September 20, 2011

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

21
22 By: 
23 Jeffrey M. Lenkov, Esq.

24 Attorneys for Defendant
25 Macy's West Stores, Inc.

DECLARATION OF JEFFREY M. LENKOV

I, JEFFREY M. LENKOV, declare that:

1. I am an attorney at law duly licensed to practice before this Court and all of the courts of the State of California. I am a partner of the law office of Manning Kass Ellrod, Ramirez, Trester, LLP, the attorneys for Defendant Macy's West Stores, Inc. (Erroneously sued herein as Macy's Inc.). If called upon to do so, I could and would testify to the following from my personal knowledge, except as to those matters stated on information and belief, as to which I believe them to be true.

2. On September 1, 2011, Plaintiff Lori Lynn Benjamin filed this action in the Superior Court of the State of California, County of Los Angeles, as Case No. SC113996. Attached hereto as Exhibit "A" is a true and correct copy of the Summons and Complaint. Attached hereto as Exhibit "B" is a true and correct copy of Defendant Macy's West Stores' answer.

3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1332, and is one which may be removed to this Court by Defendant Macy's pursuant to the provisions of 28 U.S.C. §1441, in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

4. Diversity of the parties exists as Plaintiff is a citizen of the State of California, County of Los Angeles.


5. Defendant Macy's West Stores, Inc., is an Ohio corporation with its headquarters and principal place of business located in the Cincinnati, OH.

6. Plaintiff's lawsuit asserts a cause of action for negligence against Macy's, and is based upon his claim that she suffered from physical injury and damages, including lost earnings, allegedly caused by Macy's.

7. Attached hereto as Exhibit "C" is Plaintiff's Statement of Damages which sets for the following damages sought by Plaintiff \$500,000 for general damages. In light of the alleged seriousness of the injuries claimed in Plaintiff's

1 Complaint, and the fact that Plaintiff is seeking loss of wages, hospital and medical
2 expenses, general damages, and other damages as well as pain and emotional distress,
3 the amount in controversy in this action exceeds the \$75,000 jurisdictional limit
4 established by 28 U.S.C. section 1332(a).

5 I declare under penalty of perjury under the laws of the United States of
6 America that the foregoing is true and correct and that this declaration was executed
7 at Los Angeles, California on September 20, 2011.

8 
9 Jeffrey M. Lenkov

DEMAND FOR JURY TRIAL

Defendant Macy's West Stores, Inc., hereby demands trial of this matter by jury.

Dated: September 20, 2011

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

By: 
Jeffrey M. Lenkov, Esq.

Attorneys for Defendant
Macy's West Stores, Inc.

EXHIBIT A

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

MACY'S INC., A Business Entity, DOES 1 through 50, Inclusive; DOE CORPORATION and ROE PARTNERSHIP

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LORI LYN BENJAMIN

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. (AVISO) Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Santa Monica Courthouse, 1725 Main Street, Santa Monica, CA 90401

CASE NUMBER
(Número del Caso): **SC113995**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Abram C. Zukor, Esq., Zukor and Nelson, 9665 Wilshire Blvd., # 1050, B.H., CA 90212 (310) 274-0846

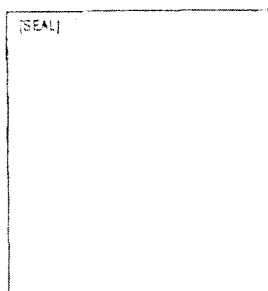
DATE:
(Fecha)

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

SEP 01 2011

John A. Clarke, Executive Officer/Clerk

By A. WILLIAMS
DEPUTY

CASE MANAGEMENT CONFERENCE

DEC 19 2011

Date

Abram Charles Zukor, Esquire
State Bar Number 60228
Marilyn H. Nelson, Esquire
State Bar Number 137074
ZUKOR AND NELSON
9665 Wilshire Boulevard, Suite 1050
Beverly Hills, California 90212
Telephone: (310) 274-0846
Facsimile: (310) 278-4862

Attorneys for Plaintiff LORI LYNN BENJAMIN

John H. Reid Dept. F 830 am

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

LORI LYNN BENJAMIN,

Plaintiff,

vs.

MACY'S INC., A Business Entity; DOES
1 through 50, Inclusive; DOE)
CORPORATION and ROE)
PARTNERSHIP,

Defendants.

) Case No.:

SC113996

) COMPLAINT FOR PERSONAL
) INJURIES DUE TO NEGLIGENCE

FIRST CAUSE OF ACTION

(By Plaintiff Against All Defendants for Negligence)

1. At all times herein mentioned, plaintiff LORI LYNN BENJAMIN was and now is a resident of the County of Los Angeles, State of California.

2. The true names and capacities, whether individual, corporate or otherwise, of defendants DOES 1 through 50, Inclusive, DOE CORPORATION and ROE PARTNERSHIP are unknown to plaintiff, who therefore sues said defendants by such fictitious names, and will seek leave of Court to amend this complaint to show their true names and capacities when the same have been ascertained.

3. Plaintiff is informed and believes and on such information and belief alleges that at all times herein mentioned, defendant MACY'S, INC., A Business Entity (hereinafter referred to as "MACY'S") was and is now a business entity qualified to do business in the State of California.

4. Plaintiff is informed and believes and on such information and belief alleges that at all times herein mentioned, defendants MACY'S and DOES 1 through 50, Inclusive, were the agents and employees of their co-defendants and, in doing the things herein alleged, were acting within the purpose and scope of said agency and employment.

5. Plaintiff is informed and believes and on such information and belief alleges that at all times herein mentioned defendants MACY'S and DOES 1 through 50, Inclusive, owned, operated, managed, maintained and controlled MACY'S WESTFIELD MALL CENTURY CITY, a department store located at 10250 Santa Monica Boulevard, Los Angeles, California 90067. (hereinafter referred to as "PREMISES").

1 6. On June 18, 2011, plaintiff LORI LYNN BENJAMIN was on the
2 PREMISES.

3
4 7. At said time and place, defendants MACY'S and DOES 1 through 50,
5 Inclusive, negligently, carelessly, recklessly and unlawfully owned, operated, managed,
6 maintained, designed and controlled the center aisle of the handbag section of the
7 PREMISES, where a display table was draped with an oversized red table cloth in an
8 unsafe, hazardous and dangerous manner. The hazardous and dangerous condition was
9 known, or in the exercise of ordinary and reasonable care would have been known to
10 defendants and each of them, in adequate time for a reasonable, prudent person to warn
11 of, or make safe the condition.
12

13
14 8. As a direct and proximate result of the negligence, carelessness,
15 recklessness and unlawfulness of defendants, and each of them, plaintiff LORI LYNN
16 BENJAMIN was injured when, as she walked along the marble floor down the center
17 aisle of the handbag section, her right foot became entangled in a display table's
18 oversized red table cloth, thereby proximately causing her to fall to the ground and
19 sustain the injuries and damages as hereinafter described.
20
21

22 9. As a direct and proximate result of the negligence, carelessness,
23 recklessness and unlawfulness of the defendants, and each of them, and the resulting
24 unsafely cloth-covered display table on the PREMISES as herein alleged, plaintiff LORI
25 LYNN BENJAMIN was injured in her health, strength and activity, sustaining injury to
26 her body and shock and injury to her nervous system and person, all of which injuries
27 have caused and continue to cause plaintiff LORI LYNN BENJAMIN great mental,
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1 physical and nervous pain and suffering. Plaintiff is informed and believes and on such
2 information and belief alleges that said injuries would result in some permanent disability
3 to plaintiff LORI LYNN BENJAMIN all to her general damage in an amount to be
4 proven at the time of trial.
5

6 10. As further proximate result of said negligence, plaintiff LORI LYNN
7 BENJAMIN has been and in the future will be required to obtain the services of
8 physicians and to incur other medical expenses. At this time, plaintiff does not know the
9 reasonable value of such services and expenses, but will ask leave to insert the same in
10 this complaint when ascertained.
11
12

13 11. At the time of the events described herein, plaintiff LORI LYNN
14 BENJAMIN was gainfully employed. As a further direct and proximate result of the
15 negligence of the defendants as herein alleged, plaintiff LORI LYNN BENJAMIN was
16 prevented from attending to her usual occupation or any occupation whatsoever and has
17 been damaged in an amount to be determined at the time of the trial. Plaintiff is informed
18 and believes and on such information and belief alleges that by reason of the said
19 negligence of the defendants and each of them, plaintiff will in the future, be prevented
20 from attending to her usual occupation for an undetermined period of time, all to her
21 damage in a sum unknown to her at this time, and plaintiff will ask leave to amend this
22 complaint accordingly when the same has been ascertained.
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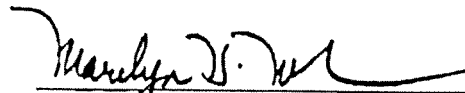
28

1 WHEREFORE, plaintiff prays for judgment against defendants, as follows:

- 2 1. For general damages in an amount to be proven at the time of trial;
- 3 2. For all medical and related expenses according to proof;
- 4 3. For costs of suit incurred herein; and,
- 5 4. For such other and further relief as the Court may deem just and proper.
- 6
- 7

8 Dated: August 30, 2011

ZUKOR AND NELSON

9 

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11 MARILYN H. NELSON, ESQUIRE
12 Attorney for Plaintiff
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EXHIBIT B

Jeffrey M. Lenkov, Esq.
State Bar No. 156478
MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP
15th Floor at 801 Tower
801 South Figueroa Street
Los Angeles, CA 90017
Telephone: (213) 624-6900

CONFIDENTIAL COPY
OF COURT RECORD
FOR THE COURT OF APPEALS

SEP 19 2011

John A. Clarke, Deputy Clerk

By M. V. Robinson, Deputy

Attorneys for Defendants

MACY'S WEST STORES, INC. [Erroneously sued herein as MACY'S INC. A Business Entity;
DOES 1 through 50, Inclusive; ROE CORPORATION and ROE PARTNERSHIP]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, WEST DISTRICT

LORI LYNN BENJAMIN,

Plaintiffs,

vs.

MACY'S INC. A Business Entity; DOES 1 through
50, Inclusive; ROE CORPORATION and ROE
PARTNERSHIP,

Defendants.

Case No.: SC113996

**ANSWER TO UNVERIFIED
COMPLAINT; DEMAND FOR
JURY TRIAL**

COMES NOW Defendant, MACY'S WEST STORES, INC. [Erroneously sued herein as
MACY'S INC. A Business Entity; DOES 1 through 50, Inclusive; ROE CORPORATION and ROE
PARTNERSHIP] and answering the unverified complaint on file herein, alleges as follows:

1. Under the provisions of § 431.30 of the California Code of Civil Procedure, each and
every allegation, and all the allegations, and each cause of action in the Complaint, and the whole
thereof, is denied; and it is expressly denied that as a direct and proximate result of any act or
omission on the part of this answering defendant, that plaintiff sustained injury or damage in the
amount alleged, or in any amount, or amounts, or at all.

FIRST AFFIRMATIVE DEFENSE

2. AS A FIRST AND SEPARATE AFFIRMATIVE DEFENSE to the Complaint and
each cause of action thereof, this answering defendant alleges by way of a plea of comparative

negligence that the plaintiff was negligent in and about the matters and activities alleged in the Complaint, that said negligence contributed to and was a proximate cause of the alleged injuries and damages, if any, and that if this defendant is found to have been negligent, and if the plaintiff is entitled to recover damages against this answering defendant by virtue of the Complaint, this defendant prays that said recovery be diminished by reason of the negligence of the plaintiff in proportion to the degree of fault attributable to the plaintiff.

SECOND AFFIRMATIVE DEFENSE

3. AS A SECOND AND SEPARATE AFFIRMATIVE DEFENSE to the Complaint, and each cause of action thereof, this defendant alleges by way of a plea of comparative negligence that the plaintiff was negligent in and about the matters and activities alleged in the Complaint, that said negligence contributed to and was a proximate cause of the alleged injuries and damages, if any, or was the sole cause thereof, and that if the plaintiff is entitled to recover damages against this defendant by virtue of the Complaint, this defendant prays that said recovery be diminished or extinguished by reason of the negligence of the plaintiff in proportion to the degree of fault attributable to the plaintiff.

THIRD AFFIRMATIVE DEFENSE

4. AS A THIRD AND SEPARATE AFFIRMATIVE DEFENSE to the Complaint and each cause of action thereof, this defendant alleges that the incident mentioned in the Complaint and the alleged damages and/or injuries, if any, sustained by plaintiff were directly and proximately caused and contributed to by the negligence of a third party(ies) in that the said third parties did not exercise proper or necessary care or control over plaintiff at about the time of the happening of the incident complained of.

FOURTH AFFIRMATIVE DEFENSE

5. AS A FOURTH AND SEPARATE AFFIRMATIVE DEFENSE to the Complaint, and each cause of action thereof, this defendant alleges that plaintiff had knowledge of the risks and hazards involved in the activity at the time and place of the alleged incident and voluntarily engaging therein thereby assumed the risks and hazards thereof.

FIFTH AFFIRMATIVE DEFENSE

6. AS A FIFTH AND SEPARATE AFFIRMATIVE DEFENSE to the Complaint and each cause of action thereof, this defendant alleges that if plaintiff is entitled to a joint judgment against this defendant and the remaining defendants, and each of them, this defendant prays that this Court order each of the judgment debtors to pay to plaintiff their proportionate share of the joint judgment, the judgment debtor's proportionate share having been determined by the trier of fact; and if this defendant is required to pay plaintiff a disproportionate share of any joint judgment, this defendant prays leave of this Court to seek contribution by motion against any other judgment debtor not paying the proportionate share allocated to any such defendant by the trier of fact.

SIXTH AFFIRMATIVE DEFENSE

7. AS A SIXTH AND SEPARATE AFFIRMATIVE DEFENSE to the Complaint and each cause of action thereof, this defendant alleges that plaintiff has failed to state facts sufficient to constitute a cause of action against defendant.

SEVENTH AFFIRMATIVE DEFENSE

8. AS A SEVENTH AND SEPARATE AFFIRMATIVE DEFENSE to the Complaint and each cause of action thereof this defendant alleges that the injuries sustained, if any, were either wholly or in part, negligently caused by persons, firms, corporations, or entities other than this answering defendant, and said negligence is either imputed to plaintiff, by reason of the relationship of said parties to plaintiff and/or said negligence comparatively reduces the percentage of negligence, if any, by this answering defendant.

EIGHTH AFFIRMATIVE DEFENSE

9. AS AN EIGHTH AND SEPARATE AFFIRMATIVE DEFENSE to the Complaint and each cause of action thereof, this answering defendant alleges that the Complaint, and all causes of action therein, are barred by the statute of limitations of the Code of Civil Procedure, including but not limited to C.C.P. §§ 337.1, 337.15, 338 and 340.

NINTH AFFIRMATIVE DEFENSE

10. AS A NINTH AND SEPARATE AFFIRMATIVE DEFENSE, to the Complaint and each cause of action thereof, this defendant alleges that payments have heretofore been made on

1 behalf of defendant to plaintiff in an amount to be proved at trial without any admission of liability
 2 or responsibility for the incident herein sued upon or the injuries alleged sustained. Defendant is,
 3 pursuant to Insurance Code § 11583, entitled to a credit in that amount against any settlement made
 4 or judgment rendered herein.

5 TENTH AFFIRMATIVE DEFENSE

6 11. AS AN TENTH AND SEPARATE AFFIRMATIVE DEFENSE to the Complaint
 7 and each cause of action thereof, this defendant alleges that any injury, damage or loss suffered by
 8 plaintiff was proximately caused by plaintiff's failure to use reasonable means to prevent
 9 aggravation of plaintiff's conditions and to use reasonable means to mitigate damages to plaintiff.

10 ELEVENTH AFFIRMATIVE DEFENSE

11 12. AS AN ELEVENTH AND SEPARATE AFFIRMATIVE DEFENSE to the
 12 Complaint and each cause of action thereof, this defendant alleges that liability, if any, for all non-
 13 economic damages shall be allocated in direct proportion to each tortfeasor's percentage of fault.
 14 Civil Code, § 1431, et seq.

15 TWELFTH AFFIRMATIVE DEFENSE

16 13. AS A TWELFTH AND SEPARATE AFFIRMATIVE DEFENSE to the Complaint
 17 and each cause of action thereof, this defendant alleges that plaintiff has unreasonably failed to
 18 mitigate damages, if any.

19 THIRTEENTH AFFIRMATIVE DEFENSE

20 14. AS A THIRTEENTH AND SEPARATE AFFIRMATIVE DEFENSE to the
 21 Complaint and each cause of action thereof, this party was given no notice of any alleged dangerous
 22 condition on its property in time to rectify any such alleged condition prior to the injuries of the
 23 plaintiff.

24 FOURTEENTH AFFIRMATIVE DEFENSE

25 15. AS A FOURTEENTH AND SEPARATE AFFIRMATIVE DEFENSE to the
 26 Complaint and each cause of action thereof, this answering defendant had no actual or constructive
 27 knowledge of the alleged dangerous or unsafe condition which plaintiff claims caused her injuries.
 28

FIFTEENTH AFFIRMATIVE DEFENSE

16. AS A FIFTEENTH AND SEPARATE AFFIRMATIVE DEFENSE to the Complaint, and each cause of action thereof, this answering defendant alleges that this subject action is frivolous and plaintiff and her attorney are liable for sanctions pursuant to C.C.P. § 128.5 and § 128.7.

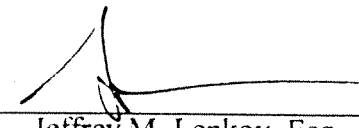
SIXTEENTH AFFIRMATIVE DEFENSE

17. AS A SIXTEENTH AND SEPARATE AFFIRMATIVE DEFENSE to the Complaint, and each cause of action thereof, this answering defendant had no ownership interest in, or control of, the premises and/or area whereat plaintiff claims to have been injured.

WHEREFORE, answering defendant prays that plaintiff take nothing by the Complaint; that answering defendant have judgment for costs of suit incurred herein; and for such further relief as this Court may deem just and proper.

Dated: September 19, 2011

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

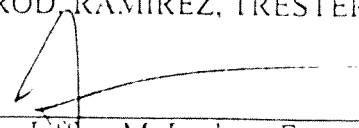
By: 
Jeffrey M. Lenkov, Esq.
Attorneys for Defendants
MACY'S WEST STORES, INC. [Erroneously
sued herein as MACY'S INC. A Business
Entity; DOES 1 through 50, Inclusive; ROE
CORPORATION and ROE PARTNERSHIP]

DEMAND FOR JURY TRIAL

Defendant, MACY'S WEST STORES, INC. [Erroneously sued herein as MACY'S INC. A Business Entity; DOES 1 through 50, Inclusive; ROE CORPORATION and ROE PARTNERSHIP] hereby demand trial of this matter by jury.

Dated: September 19, 2011

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

By: 
Jeffrey M. Lenkov, Esq.
Attorneys for Defendants
MACY'S WEST STORES, INC. [Erroneously
sued herein as MACY'S INC. A Business
Entity; DOES 1 through 50, Inclusive; ROE
CORPORATION and ROE PARTNERSHIP]

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 801 South Figueroa Street, 15th Floor, Los Angeles, California 90017.

On September 19, 2011, I served the document described as **ANSWER TO UNVERIFIED COMPLAINT; DEMAND FOR JURY TRIAL** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Abram Charles Zukor, Esq.
Marilyn H. Nelson, Esq.
ZUKOR AND NELSON
9665 Wilshire Boulevard, Suite 1050
Beverly Hills, CA 90212
Attorney for Plaintiff, Lori Lynn Benjamin
310 274-0846
310 278-4862 Fax

☒ **(BY MAIL)** I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I placed such envelope with postage thereon prepaid in the United States mail at Los Angeles, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(BY OVERNIGHT COURIER):** I placed the above-referenced document(s) in (an) envelope(s) designated by the express service carrier (UPS) for overnight delivery, addressed as indicated above. I delivered said UPS envelope to the personnel of our mail room. I am "readily familiar" with the firm's practice of collecting and processing documents intended for UPS overnight delivery. Under that practice, after the document is delivered to the firm's mail room, it is deposited that same day, with delivery fees provided for, in a box or other facility regularly maintained by the express service carrier or is delivered to an authorized courier or driver authorized by the express service carrier to receive documents, for overnight delivery.

☐ **(BY FACSIMILE)** I telecopied such document to the offices of the addressee at the following fax number:

☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

☐ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **(FEDERAL)** I declare under penalty of perjury under the laws of the United States of America, that the above is true and correct.

Executed on September 19, 2011 at Los Angeles, California.

Yvonne F. Sanchez
YVONNE F. SANCHEZ

EXHIBIT C

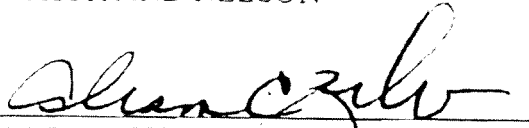
STATEMENT OF DAMAGES

1 Plaintiff, LORI LYNN BENJAMIN, has incurred the following damages as a
2 result of the above-entitled action:

- 3
4 1. General Damages: \$ 500,000.00
5 2. Medical Expenses (unknown):
6

7 Dated: September 7, 2011

ZUKOR AND NELSON

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9 
10 ABRAM CHARLES ZUKOR, ESQ.
11 Attorney for Plaintiff
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Mariana P. Pfaelzer and the assigned discovery Magistrate Judge is Frederick F. Mumm.

The case number on all documents filed with the Court should read as follows:

CV11- 7824 MRP (FFMx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

The United States District Judge assigned to this case will review all filed discovery motions and thereafter, on a case-by-case or motion-by-motion basis, may refer discovery related motions to the Magistrate Judge for hearing and determination

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself) LORI LYNN BENJAMIN		DEFENDANTS MACY'S WEST STORES, INC.																	
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Abram C. Zukor, Esq. ZUKOR AND NELSON 9665 Wilshire Boulevard, Suite 1050 Beverly Hills, CA 90212 310-274-0846 Attorneys for Plaintiff, LORI LYNN BENJAMIN		Attorneys (If Known) Jeffrey M. Lenkov, Esq. MANNING & KASS, ELLROD, RAMIREZ, TRESTER LL 801 S. Figueroa Street, 15th Floor 213-624-6900 Attorneys for MACY'S WEST STORES, INC.																	
II. BASIS OF JURISDICTION (Place an X in one box only.) 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> <th style="text-align: center;">PTF</th> <th style="text-align: center;">DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State <input checked="" type="checkbox"/> 1</td> <td>1 Incorporated or Principal Place of Business in this State</td> <td>4</td> <td>4</td> </tr> <tr> <td>Citizen of Another State 2</td> <td>2 Incorporated and Principal Place of Business in Another State</td> <td>5</td> <td>5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country 3</td> <td>3 Foreign Nation</td> <td>6</td> <td>6</td> </tr> </tbody> </table>		PTF	DEF	PTF	DEF	Citizen of This State <input checked="" type="checkbox"/> 1	1 Incorporated or Principal Place of Business in this State	4	4	Citizen of Another State 2	2 Incorporated and Principal Place of Business in Another State	5	5	Citizen or Subject of a Foreign Country 3	3 Foreign Nation	6	6
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Citizen or Subject of a Foreign Country 3	3 Foreign Nation	6	6																
IV. ORIGIN (Place an X in one box only.) 1 Original Proceeding <input checked="" type="checkbox"/> 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify): 6 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge																			
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="" type="checkbox"/> Yes No (Check 'Yes' only if demanded in complaint.) CLASS ACTION under F.R.C.P. 23: Yes <input checked="" type="checkbox"/> No MONEY DEMANDED IN COMPLAINT: \$ 0.00																			
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) <p align="center">28 U.S.C. SECTION 1332</p>																			
VII. NATURE OF SUIT (Place an X in one box only.) <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width:20%;">OTHER STATUTES</th> <th style="width:20%;">CONTRACT</th> <th style="width:20%;">TORTS</th> <th style="width:20%;">TORTS</th> <th style="width:20%;">PRISONER PETITIONS</th> <th style="width:20%;">LABOR</th> </tr> </thead> <tbody> <tr> <td>400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce/ICC Rates/etc. 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Sat. TV 810 Selective Service 850 Securities/Commodities Exchange 875 Customer Challenge 12 USC 3410 890 Other Statutory Actions 891 Agricultural Act 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Info. Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes</td> <td>110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loan (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise REAL PROPERTY 210 Land and Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property</td> <td>PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Fed. 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FOR OFFICE USE ONLY: Case Number:

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s) _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s) _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District, California County outside of this District, State if other than California, or Foreign Country, in which **EACH** named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b)

County in this District: *	California County outside of this District, State, if other than California, or Foreign Country
Los Angeles	

(b) List the County in this District, California County outside of this District, State if other than California, or Foreign Country, in which **EACH** named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District: *	California County outside of this District, State, if other than California, or Foreign Country
	Macy's West Stores, Inc. (Ohio)

(c) List the County in this District, California County outside of this District, State if other than California, or Foreign Country, in which **EACH** claim arose.

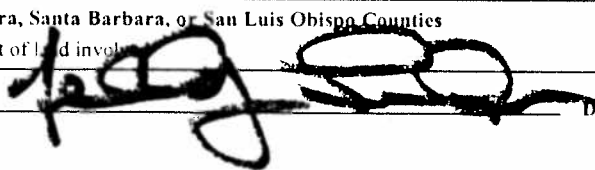
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District: *	California County outside of this District, State, if other than California, or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):

 Date 9/21/11

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
801	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935ff(b))
802	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
803	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended, plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
803	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
804	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
805	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))